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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

PETER McCOLGAN, D.M.D.
License No. DI 11400

ORDER OF TEMPORARY
SUSPENSION

TO PRACTICE DENTISTRY IN THE
STATE OF NEW JERSEY

THIS MATTER was opened to the New Jersey State Board of Dentistry on an application for a temporary suspension of respondent's license to practice dentistry pursuant to N.J.S.A. 45:11-22, brought by Attorney General Peter Vernerio, Eleanor G. Bernstein, Deputy Attorney General, appearing. An Order to Show Cause was signed by Anthony Villane, D.D.S., Board President, scheduling this matter to be heard on October 2, 1996.

The Verified Complaint in this matter alleged in nine counts that respondent had improperly touched nine female patients, which touching was sexually motivated and unrelated to legitimate dental practice. Specifically, the Complaint alleged that as early as October 1995 continuing through August 1996, respondent improperly touched patients under the guise of rendering dental treatment for his own sexual gratification. The Complaint further alleged that on September 10, 1996, respondent admitted to an investigator from the Enforcement Bureau much of the alleged conduct as it related to patient S.R. As to each patient, respondent's conduct is alleged to have constituted gross malpractice in violation of N.J.S.A. 45:1-21(c); repeated acts of negligence in violation of N.J.S.A. 45:1-21(d); and professional misconduct in violation of N.J.S.A. 45:1-21(e). Said conduct was further alleged to demonstrate the absence of good moral

character in violation of N.J.S.A. 45:6-3. All of the conduct was alleged to demonstrate that any further practice by respondent would pose a clear and imminent danger to public health, safety and welfare pursuant to N.J.S.A. 45:1-22. The State's complaint was supported by certifications of the nine patients, a certification of the investigator from the Enforcement Bureau to whom respondent made admissions regarding the alleged conduct and a brief in support of the State's application.¹ No Answer was filed to the Verified Complaint.

Prior to the return date, respondent, through counsel Michael S. Bubbs, Esq., submitted via facsimile a letter dated October 1, 1996, requesting an adjournment of the October 2, 1996 hearing. Neither the President nor the Vice President of the Board were available. Counsel was advised to appear on October 2, 1996 to request the adjournment.

At its regular monthly meeting on October 2, 1996, the Board commenced a hearing on the Attorney General's application, with Anthony Villane, D.D.S., presiding. Respondent was represented by Michael S. Bubbs, Esq.; Deputy Attorney General Eleanor G. Bernstein appeared on behalf of the State. Preliminarily respondent filed a Notice of Motion for Relief Prior to filing an Answer seeking to defer Board decision pending the plenary proceeding. Concurrent with said application, respondent made a motion to adjourn the hearing in order to afford respondent's counsel more time to prepare his case. Both motions were denied based on the Board's assessment of the nature of the charges and its finding that counsel had been provided adequate notice with service having been effected on September 26, 1996.

The Attorney General sought a Board ruling limiting the admissibility of certain

¹Upon the Attorney General's motion and respondent's concurrence, it is directed that all references to the patients' identities be deleted before any public dissemination of transcripts or evidence in this matter. All references to patients shall be by the use of initials.

evidence which was to be proffered by respondent. Specifically, Deputy Attorney General Bernstein asserted that information relative to the criminal background of the victims should be excluded unless presented in the form of a judgment of conviction. Counsel for respondent argued, that due to the time constraints and the seriousness of the charges filed against respondent, he was unable to obtain copies of any judgments. Recognizing the more expansive opportunities to develop evidence at the plenary hearing, the Board determined not to allow introduction of the private detective's summary proffered by respondent's counsel.

In her opening remarks, the deputy directed the Board's attention to the sheer number of patients who had come forward with statements containing a common core of factual allegations with striking similarities. In support of this assertion, Deputy Attorney General Bernstein pointed to the certifications of the nine female patients, each of which asserted that respondent engaged in conduct that consisted of touching, massaging, and fondling intimate parts of their bodies without their consent. Further, a number of the victims reported that respondent rubbed Vaseline on areas of their bodies. Viewed in their entirety, the statements graphically demonstrate a pattern of control by respondent over his female patients in situations where the patients were extremely vulnerable. Relying on those factors, together with the egregious nature of the conduct, the deputy argued that respondent's conduct palpably demonstrates that his continued practice poses a clear and imminent danger to the public such that respondent's license should be immediately, temporarily suspended.

Respondent's counsel, in his opening statement, acknowledged the seriousness of the allegations but questioned whether they represented an imminent danger to the public which warranted the immediate suspension of respondent's license. Counsel repeatedly asserted that

respondent had not been afforded adequate time to prepare for the hearing. Counsel indicated that he intended to challenge the credibility of the patient S.R. Counsel further suggested that once S.R.'s credibility was at issue, all subsequent complaints would be suspect since S.R. was the first patient to come forward and file a criminal complaint against respondent. Counsel pointed out that he intended to submit affidavits from both the receptionist and the dental assistant present in respondent's office on May 21, 1996, which would demonstrate that the conduct alleged regarding S.R. could not have occurred. Counsel urged the Board to permit respondent to continue to retain his license and, if necessary, to consider a less restrictive alternative, such as monitoring, pending a plenary hearing.

At the hearing, Deputy Attorney General Bernstein entered into evidence, without objection, the affidavit of the investigator together with the certified statements of each of the nine female patients as contained in the verified complaint.²

The deputy highlighted the similarities in respondent's alleged conduct in each of

²The following documents were entered into evidence by the State at the time of the hearing, including those submitted with the Verified Complaint as follows:

- S-1 Certification of S.M. #1 regarding interview dated September 25, 1996.
- S-2 Certification of C.D. regarding interview dated September 23, 1996.
- S-3 Certification of S.R. regarding statement provided to the Mount Olive Police on May 26, 1996.
- S-4 Affidavit of Investigator Susan Evans regarding September 10, 1996 interview of respondent.
- S-5 Certification of D.N. regarding interview dated September 19, 1996.
- S-6 Affidavit of J.W. attesting to handwritten notes dated August 9 and 12, 1996.
- S-7 Certification of M.P. regarding interview dated September 20, 1996.
- S-8 Certification of S.M. #2 regarding interview dated September 20, 1996.
- S-9 Certification of P.D. regarding interview dated September 20, 1996
- S-10 Certification of P.H. regarding interview dated September 24, 1996.

the certifications. Specifically, the deputy pointed out that in each and every instance respondent began by touching or massaging the patient's neck, shoulders and backs. Respondent then either slid his hand underneath the top or bottom of the patient's shirt in order to massage her chest, breasts or stomach area. In most instances, respondent either recommended the use of or actually rubbed Vaseline onto various parts of the patient's body without the patient's consent. Each and every patient noted in her statement the deleterious effect that these encounters have had upon her. Additionally, the deputy drew the Board's attention to some of the particularly egregious acts committed by respondent. Deputy Attorney General Bernstein noted for example that, while respondent applied Vaseline to the body of the physically disabled double amputee patient (S.M.#1), she attempted to get out of the dental chair but respondent pushed her back into the chair. He then told her to relax and tried unsuccessfully to slide his hand down her pants. After she grabbed his hand and told him to stop, he finally helped her into her wheelchair but forced her to wait 15 minutes alone in the office with him before calling her transportation service. Another disturbing example involved a blind patient (C.D.). According to the patient, respondent fondled her breasts while she was seated in the dental chair. When a staff member entered the room, respondent stopped, but left his hand on her breasts. Once the staff member exited the room, he continued to fondle her breasts.

Another female patient (S.R.) arrived alone at respondent's office on a Sunday evening for emergency treatment. After treating S.R., respondent unbuttoned her blouse, placed his hand under her bra and massaged her breasts. Respondent even went so far as to unhook her bra to massage her back at which point S.R. noticed that respondent became sexually aroused before re-hooking her bra and buttoning up her blouse. As noted by the deputy,

respondent by his own admissions to an investigator from the Enforcement Bureau admitted that he massaged her neck, shoulders and back that evening because she appeared tense and acknowledged that at his suggestion, either he or S.R. applied Vaseline to a rash on S.R.'s lower neck area that evening. Respondent also admitted that he has applied Vaseline on other patients' dry skin or rashes.

Two of the female patients complained that respondent had failed to provide them with spit bibs. Significantly, both women detailed in their certifications how respondent rubbed their chests while blotting their dampened shirts. Deputy Attorney General Bernstein also described one female patient's account of how, after being treated by respondent, she broke out in a rash that covered all of the areas of her body that respondent had massaged while wearing latex gloves. On her way home, P.H. broke out into a rash, experienced swelling in her left eye and had difficulty breathing. According to P.H., she then went to the hospital from respondent's office and was told that she had an allergic reaction to the latex gloves used by respondent.

Respondent declined to testify. Respondent's counsel reiterated the difficulties experienced in attempting to prepare respondent's defense to such serious allegations due to the time constraints. Counsel argued that respondent's license should not be immediately suspended in the absence of any fresh complaint. He pointed out to the Board that all of the allegations contained in the patients' statements stem from incidents that occurred in or before May 1996.

Mr. Bubbs challenged the patients' sworn statements by raising questions as to the credibility of the patients, as well as by taking issue with the accuracy and validity of the accusations in the patients' statements. In support of this position, counsel "testified", without

supporting documentary evidence and over the objection of the deputy, that S.R. had a criminal record that was in some way drug related.³ Relying on that supposition, counsel referred to S.R.'s patient records pointing out that respondent's note indicates that: "If [S.R.] calls for prescription, don't prescribe unless seen." Having attempted to raise issue as to S.R.'s character, counsel suggested that the Board should find the events described in what he referred to as the other eight "copycat" statements to be less probable because some of those individuals who came forward did so after having read in the newspaper about respondent's arrest. Counsel did not supply anything to substantiate that assertion.

In an effort to further discredit the truthfulness of the nine complaining patients, respondent's counsel asked the Board to consider several other documents, including affidavits by respondent's receptionist/dental assistant, Rachel Nichol, and dental assistant, Stephanie Martinovich.⁴

³It is important to note that despite the fact that the Board permitted respondent's counsel to inform them regarding arrests and alleged convictions against patient S.R., counsel admitted to the Board that he had not obtained any judgments of conviction to enter into evidence nor could he cite the actual violation forming the basis for the conviction and, the Board, at this juncture, is unable to attach any probative value to counsel's remarks as to the victim's credibility.

⁴Entered in evidence on behalf of respondent at the time of the hearing were the following documents:

- R-1 Notice of Motion for relief prior to filing an Answer including Memorandum in support of motion which included affidavits of respondent's receptionist and dental assistant, Xeroxed copies of pictures that were purported to be taken at respondent's office, a copy of an August 10, 1996 telephone bill, two letters asserting respondent's good character, respondent's treatment notes for patients D.N. and P.H., and respondent's excerpts from dental literature.
- R-2 Nine original patient records for the following patients: S.M.#1, C.D., S.R., D.N., J.W., M.P., S.M.#2, P.D., and P.H.
- R-3 Letter report from respondent's accountant, Linda L. Telschow, Certified Public

As to the assertions by S.M.#1 that respondent inappropriately touched her, restrained or detained her, both employees averred in their affidavits that respondent was not alone with S.M.#1 on May 21, 1996. Both women stated that they were in and out of the exam room assisting respondent while he treated SM#1. Ms. Nichol and Ms. Martinovich further explained that the room in which S.M.#1 was treated had a glass window through which they were able to watch the doctor and patient at all times. According to their statements, neither employee ever observed respondent touch S.M.#1 in an inappropriate manner at any time nor did they see him attempt to push S.M.#1 back into the treatment chair.

As to patient D.N., counsel pointed out that despite D.N.'s assertions that she went to respondent on only three occasions for treatment of a root canal that was not completed by respondent, D.N.'s patient records assert that she saw respondent for a total of five visits and respondent did complete the root canal. With regard to P.H.'s statement that on the way home from respondent's office she broke out in a rash, had trouble breathing and went directly to the hospital to receive treatment, respondent's counsel referred to the hospital records for P.H. and noted for the Board that patient P.H. was treated by respondent at 2 p.m.; the rash appeared at 2:45; and the hospital record reflects that P.H. was not treated until 6 p.m. that day. The Board did not find these inconsistencies to be noteworthy.

Accountant, dated September 30, 1996, to the State Board regarding respondent's financial situation.

R-4 Three letters of support from a patient and friends.

These documents were entered into evidence with the reservation that the evidence would be given its appropriate weight based on its reliability and relevance. At the time of the hearing, respondent's counsel was only able to produce facsimile signatures for the two affidavits by respondent's employees. Counsel was asked to produce original signatures three days from the date of the hearing it should be noted that all other documents were unsworn.

As to patient J.W.'s allegations that the incidents occurred during lengthy visits while alone with respondent in his office, counsel referred to respondent's phone bill which reflected that J.W. could not have been alone in the office with respondent during her visit because the bill evidenced that phone calls were made from respondent's office during that period of time. Counsel also pointed out that it was highly unlikely that J.W. was left alone with respondent during treatment without interference from one or more of J.W.'s four children who were also in the office. This argument was found to be of no probative value to dispute J.W.'s allegations that she was alone with respondent in the treatment room.

The Board carefully considered the testimony, documentary evidence and the arguments of counsel. Most significant to the Board in its review of the charges herein are the certifications submitted by nine female patients and the remarkable similarities found in the patients' descriptions, which were bolstered by respondent's unrefuted admissions made to the investigator for the Enforcement Bureau that respondent massaged S.R.'s back and assisted in applying of Vaseline to her rash during the course of dental treatment and, at respondent's recommendation, either he or S.R. applied Vaseline to her rash. We are satisfied that the nine patients supplying statements have reported their observations truthfully in an effort to cooperate with the investigation into this matter. The statements comprehensively describe the conduct and, in our view, can stand on their own. The diversity of the submissions along with their detail persuade us of their reliability. Respondent has failed to provide any credible substantiated evidence to dissuade the Board of this position. In fact, the Board found it incredible that respondent would pay two employees merely to watch through a window into his treatment room all day long.

Respondent has urged the Board to adopt a measure short of temporary suspension. Respondent's counsel urged the Board to order some type of monitoring that would adequately address any danger presented. Though facially appealing, such a solution does not address the underlying problems evidenced by the conduct described in these patients' statements. Particularly egregious was the fact that much of the alleged conduct occurred when patients such as S.M.#1 (the physically handicapped double amputee) and C.D. (the blind patient) were placed in a one-to-one situation with respondent where he took advantage of their complete dependence upon him. Thus, in considering the totality of the evidence presented, we have found that the application before us involves a dentist whose conduct demonstrates such poor judgment and on the present record such a lack of control on the his part that we cannot accept mere limitations on his license.

In sum, the Board concludes that the Attorney General has made a palpable demonstration that respondent's course of conduct, if permitted to continue, would pose a clear and imminent danger to those who entrust their health to respondent as contemplated pursuant to N.J.S.A. 45:1-22. Having reached the conclusion that there is sufficient indicia of reliability in these nine patient statements and in consideration of the particularly egregious conduct, the Board finds that we cannot trust that Dr. McColgan will properly comply with chaperon requirements such that a patient under his care will not be subjected to similar behavior.

Accordingly, it is on this 7th day of October, 1996,

ORDERED:

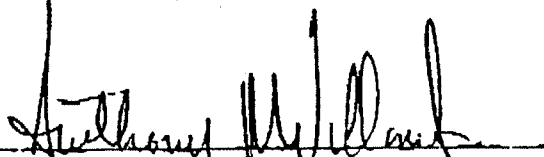
1. Respondent's license to practice dentistry in the State of New Jersey shall be temporarily suspended pending the disposition of a plenary hearing in this matter. Such

suspension is effective ten working days from the date of the October 2, 1996 hearing.

(October 17, 1996). This matter shall be immediately transferred to the Office of Administrative

Law with a hearing date to be set as expeditiously as possible.

NEW JERSEY STATE BOARD OF DENTISTRY



ANTHONY VILLANE, D.D.S., President

DIRECTIVE REGARDING FUTURE ACTIVITIES
OF BOARD LICENSEE WHO HAS BEEN SUSPENDED/
REVOKED AND USE OF THE PROFESSIONAL PREMISES

A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board shall conduct him/herself as follows.

- 1) Promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.
- 2) Desist and refrain from the practice of dentistry in any form either as principal or employee of another licensee.
- 3) Inform each patient at the time of any inquiry of the suspended or revoked or retired status of the licensee. When a new licensee is selected by a patient, the disciplined practitioner shall promptly make available the original or a complete copy of the existing patient record to the new licensee, or to the patient if no new licensee is selected. Such delivery of record does not waive any right of the disciplined practitioner to claim compensation earned for prior services lawfully rendered.
- 4) Not occupy, share or use office space in which another licensee practices dentistry.
- 5) Desist and refrain from furnishing professional dental services, giving an opinion as to the practice of dentistry or its application, or any advice with relation thereto; and from holding him/herself out to the public as being entitled to practice dentistry or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice dentistry. This prohibition includes refraining during the period of suspension or revocation from placement of any advertisement or professional listing in any advertising medium suggesting eligibility for practice or good standing.
- 6) Cease to use any stationery whereon such person's name appears as a dentist in practice. If the practitioner was formerly authorized to issue written prescriptions for medication or treatment, such prescription pads shall be destroyed if the license was revoked. If the license was suspended, the prescriptions shall be destroyed or shall be stored in a secure location to prevent theft or any use whatsoever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed

of, transferred or safeguarded.

7) Not share in any fee for dental services performed by any other licensee following the suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf prior to the effective date of the suspension, revocation or surrender.

8) Use of the professional premises. The disciplined licensee may allow another licensee to use the office premises formerly occupied by the disciplined licensee on the following conditions only:

(a) The new licensee shall conduct the practice in every respect as his/her own practice including billings, claim forms, insurance provider numbers, telephone numbers, etc.

(b) The disciplined licensee may accept no portion of the fees for professional services rendered by the new licensee, whether by percentage of revenue, per capita patient, or by any other device or design, however denominated. The disciplined licensee may, however, contract for or accept payment from the new licensee for rent (not exceeding fair market value) of the premises and either dispose of or store the dental material and equipment, but in no event shall the disciplined licensee, on the basis of a lease or any other agreement for compensation place in the possession of any operator, assistant or other agent such dental material and equipment, except by a chattel mortgage.

(c) No use of name of disciplined licensee or personally owned office name or tax- or provider identification number.

1. Where the disciplined licensee was using an individual IRS number or where the licensee was the sole member of an incorporated professional association or a corporation, the disciplined licensee may contract to rent the office premises to a new practitioner. The new practitioner must use his/her own name and own provider number on all bills and insurance claim forms. Neither the name nor the number of the disciplined licensee may be used. When the license of a sole practitioner has been revoked, a trade name must be cancelled and a professional service corporation must be dissolved.

2. Where the disciplined licensee is a

member of a professional group which uses a group-type name such as the ABC Dental Group, the disciplined licensee must arrange to have his/her name deleted, covered up or otherwise obliterated on all office signs, advertisements published by the group after the effective date of the Board disciplinary Order and on all printed billings and stationery. The other group members may continue to function under the incorporated or trade name, minus the name of the disciplined licensee, and may continue to use its corporate or professional identification number.

(9) Report promptly to the Board compliance with each directive requiring moneys to be reimbursed to patients or to other persons or third party payors or to any court, and regarding supervisory reports or other special conditions of the Order.

(10) A practitioner whose license is surrendered, revoked or actively suspended for one year or more shall conduct him/herself as follows:

1) Promptly require the publishers of any professional directory and any other professional list in which such licensee's name is known by the disciplined licensee to appear, to remove any listing indicating that the practitioner is a licensee of the Board in good standing.

2) Promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

(11) A practitioner whose practice privileges are affected by a Board disciplinary Order shall, within 90 days after the effective date of the Board Order, file with the Executive Director of the Board a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person. Any change in the residence, address or telephone number shall be promptly reported to the Executive Director.